

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 22, 2009

EDDIE WILLIAMS, JR. v. JIM WORTHINGTON, WARDEN

**Appeal from the Criminal Court for Morgan County
No. 9177 E. Eugene Eblen, Judge**

No. E2009-00355-CCA-R3-HC - Filed February 22, 2010

The pro se Petitioner, Eddie Williams, Jr., appeals as of right from the Morgan County Criminal Court's denial of his petition for a writ of habeas corpus attacking his 1988 convictions for two counts of robbery with a deadly weapon for which he received two concurrent sentences of life imprisonment. At the habeas corpus court and on appeal, he alleges that the trial court's erroneous classification of him as a Range II, persistent offender under the 1982 Sentencing Act renders his sentences illegal. Following the appointment of counsel and an evidentiary hearing, the habeas corpus court denied relief finding that the Petitioner failed to establish a basis for habeas corpus relief. Following our review, we affirm the judgment of the habeas corpus court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

Robert Vogel, Knoxville, Tennessee (at hearing); and Eddie Williams, Jr., Nashville, Tennessee, Pro Se (on appeal).

Robert E. Cooper, Jr., Attorney General and Reporter; John H. Bledsoe (at hearing) and Sophia S. Lee (on appeal), Assistant Attorneys General; attorneys for appellee, State of Tennessee.

OPINION

The record reflects that the Petitioner was convicted of two counts of robbery with a deadly weapon for offenses that occurred in August 1987. Following his conviction by a

Shelby County jury, the trial court sentenced the Petitioner to two concurrent life sentences on March 11, 1988. The trial court based its sentencing decision upon its finding that the Petitioner qualified as a Range II, persistent offender in light of his convictions of two or more felonies within the five years prior to the commission of the subject offenses. This court affirmed the convictions on direct appeal. See State v. Eddie Williams, No. 20, 1988 WL 138818 (Tenn. Crim. App., at Jackson, Dec. 28, 1988), app. denied (Tenn. Apr. 3, 1989). The Petitioner filed two post-conviction petitions which were denied, and this court affirmed the post-conviction court's orders on appeal. See Eddie Williams, Jr. v. State, No. 02C01-9202-CR-0041, 1993 WL 209852 (Tenn. Crim. App. June 16, 1993), app. denied (Tenn. Nov. 1, 1993); Eddie Williams, Jr. v. State, No. CCA02C01-9501CR00016, 1995 WL 555047 (Tenn. Crim. App. Sept. 20, 1995), app. denied (Tenn. Jan. 29, 1996).

On August 29, 2003, the Petitioner filed his first petition for a writ of habeas corpus alleging that his sentence had expired due to the trial court's reliance upon convictions for which he was never convicted. The habeas corpus court denied relief, and this court affirmed the denial by memorandum opinion. Eddie Williams, Jr. v. David Mills, No. W2003-02352-CCA-R3-HC, 2004 WL 221297 (Tenn. Crim. App. Jan. 30, 2004). While the appeal of the denial of the first habeas corpus petition was pending, the Petitioner filed a second petition for a writ of habeas corpus relief on December 11, 2003 alleging that his convictions were the result of discrimination in the selection of the Shelby County grand jury foreperson. The habeas corpus court denied relief, and this court affirmed the denial by memorandum opinion. Eddie Williams, Jr. v. David Mills, No. W2004-00056-CCA-R3-HC, 2004 WL 1159569 (Tenn. Crim. App. May 21, 2004), app. denied (Tenn. Aug. 30, 2004).

The Petitioner filed the instant petition on September 15, 2005, once again challenging his classification as a Range II, persistent offender under the 1982 Sentencing Act on the basis that he did not possess the requisite prior felony convictions to qualify for range enhancement. On October 13, 2005, he amended his petition to include allegations that his sentence was enhanced in violation of Blakely v. Washington, 542 U.S.296 (2006) and State v. Gomez, 239 S.W.3d 733 (Tenn. 2007). At the January 20, 2009, evidentiary hearing, the Petitioner argued that the trial court improperly relied upon two assault and battery convictions that were misdemeanors. The State argued that the issue of range enhancement was not cognizable in a habeas corpus proceeding; furthermore, the State argued that even if a cognizable claim was presented, the sentencing hearing transcript reflected that the trial court relied upon convicted felonies from November 14, 1984 and May 12, 1986 to increase the Petitioner's sentencing range. Based upon the proof presented at the evidentiary hearing, the habeas corpus court denied relief.

ANALYSIS

In Tennessee, the grounds upon which habeas corpus relief may be granted are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The writ will issue only when the petitioner has established a lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 432 S.W.2d 656 (Tenn. 1968); State ex rel. Wade v. Norvell, 443 S.W.2d 839 (Tenn. Crim. App. 1969). The purpose of the habeas corpus petition is to contest a void, not merely a voidable, judgment. State ex rel. Newsome v. Henderson, 424 S.W.2d 186, 189 (Tenn. 1968). A void, as opposed to a voidable, judgment is “one that is facially invalid because the court did not have the statutory authority to render such judgment.” See Summers v. State, 212 S.W.3d 251, 256 (Tenn. 2007). A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. See Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Early in the pendency of this petition, the State filed a motion for summary dismissal based upon the Petitioner’s failure to satisfy the procedural requirements in not attaching copies of the judgments under attack to his petition for a writ of habeas corpus. The State asserts this on appeal as an additional basis to affirm the habeas corpus court’s decision. The State correctly noted this failure to comply with procedural requirements. Not only are the judgments not attached to the petition, they are notably absent from the entire record before this court. Thus, the petition could have been summarily dismissed for this procedural shortfall. Tenn. Code Ann. § 29-21-107; Summers, 212 S.W.3d at 260; see also Eddie Williams, Jr. v. David Mills, No. W2003-02353-CCA-R3-HC, 2004 WL 221297, at *2 (Tenn. Crim. App. Jan. 30, 2004) (petitioner failed to attach judgments to first petition for a writ of habeas corpus).

The State also sought summary dismissal of the petition based its failure to state a cognizable claim. Again before this court, the State argues that an allegation that the underlying facts to support sentencing range classification are insufficient is not a cognizable claim in a habeas corpus proceeding. We agree and note that this could have served as an additional basis for summary dismissal by the habeas corpus court. See id., at *1 (attacks on sufficiency of proof to establish range enhancement render a sentence voidable, not void). We further note that Blakely allegations have been repeatedly held to be inappropriate for habeas corpus review. See, e.g., Gary Wallace v. State, No. W2007-01949-CCA-R3-CO, 2008 WL2687698, at *2 (Tenn. Crim. App. Jul. 2, 2008); Glen Cook v. State, No. W2006-01514-CCA-R3-PC, 2008 WL 821532, at *10 (Tenn. Crim. App. Mar. 27, 2008); Billy Merle Meeks v. Ricky J. Bell, Warden, No. M2005-00626-CCA-R3-HC, 2007 WL4116486, at *7 (Tenn. Crim. App. Apr. 7, 2008).

Nevertheless, the habeas corpus court held an evidentiary hearing and ruled that the Petitioner failed to establish his claim. We agree with the habeas corpus court that the Petitioner failed to establish that his range enhancement was based upon prior misdemeanor convictions instead of prior felonies. In fact, the sentencing hearing transcript that the Petitioner attached to his petition indicates that the trial court based the range enhancement on felony convictions from November 14, 1984 and May 12, 1986. We reiterate however that the petitioner's claim that his sentence was enhanced without sufficient proof was not cognizable in a habeas corpus proceeding. Accordingly, with all of these considerations in mind, the petition was properly denied.

CONCLUSION

In consideration of the foregoing and the record as a whole, the habeas corpus court's denial of relief is affirmed.

D. KELLY THOMAS, JR., JUDGE